

REMARKS

Claims 1-26 and 57-96 are pending. Dependent claim 21 has been amended to recite subject matter like that recited in dependent claims 9, 64 and 83. New dependent claim 96 has been added, support for which may be found, for example, at least at paragraphs 0057-58 of the published application. No independent claims have been amended. Reconsideration of this application is respectfully requested in light of the remarks and amendments herein.

Art Rejections

Claims 1-26 and 57-95 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,374,177 (“Lee”) in view of U.S. Patent No. 6,587,127 (“Leeke”). This rejection is respectfully traversed.

Independent claim 1 recites a method for communicating data content. The method comprises: communicating broadcast information to a receiver via digital radio broadcast; receiving information regarding a plurality of actions entered in a man-machine interface of said receiver and tracking said plurality of actions, said plurality of actions associated with multiple items of data content of interest; accumulating said information regarding said plurality of actions until a predetermined threshold associated with said plurality of actions is reached, and, after reaching said threshold, communicating a request for said multiple items of data content of interest.

Lee’s system “consists of (1) a remotely programmable, microcomputer controlled multimedia device 20 in a vehicle with a wireless IP address for Internet access, (2) an Internet gateway network 30 that provides programming, information and internet access to the multimedia device 20, and (3) one or more remote programming devices.” Col. 5, lines 52-59 and FIG. 1. More particularly, as shown in FIG. 2 therein, Lee’s vehicle-based multimedia device 20 includes a microcomputer 90, storage devices 92, a multi-band AM, FM, TV audio and digital audio broadcast receiver 100, a GPS receiver 110, wireless transceivers 120, and a wideband wireless Internet addressable gateway transceiver 130. Col. 8, lines 25-41, and FIG. 2. A stated object of Lee’s system is to allow the purchase of an advertised on air product (*i.e.*, advertised over the broadcast airwaves) “with the touch of a button.” Col. 7, lines 62-65.

Leeke discloses a system for providing audio content from a server 102 to a client apparatus 106 via a network 100, such as the Internet, wherein the client apparatus 106 may be a general purpose computer, a network computer, a network television, an Internet television, a wireless device. Col. 4, lines 7-30, and FIG. 1. Leeke's client apparatus 106, operable by a user, can access a player 142 via the electronic network 100 using a dedicated electronic address (e.g., URL), wherein the player 142 resides on the server 102, not on the client 106. Col. 4, lines 50-67. The player 142 residing on the server 102 communicates to the client 106 a graphical user interface (GUI), including a series of display screens or windows, shown in FIGS. 2-34, 36-39, and 47-56 thereby providing the end user of the client apparatus with a browser and control of content-selection and playback. *See, e.g.*, Col. 7, lines 38-44. The GUI of the player 142 provided by the server 102 includes a "listening booth" feature that permits the end user to interact with the series of GUI display windows of the content player 142 via the end user's browser so that the end user can listen to samples of audio selections stemming from user-selected categories and rate the samples. *See, e.g.*, Leeke FIGS. 2 and 24-26, col. 7, lines 38-54, and col. 22, line 1- col. 23, line 41. When a number of albums rated by the end user reaches a predetermined number, the user can initiate a request for a complementary copy by selecting an album in the list by means of a dedicated button to request shipment to the end user. *See* Leeke col. 23, lines 35-40. To operate the "listening booth" feature, *the end user navigates* among five more display windows of the GUI of the player 142 as illustrated in FIGS. 24-28 and described at col. 22, line 1 – col. 23, line 41.

The Office acknowledges that Lee's system for communicating content to a vehicle-based multimedia device does *not* possess the claimed features of: (1) receiving information regarding a plurality of actions entered in a man-machine interface of said receiver and tracking said plurality of actions, said plurality of actions associated with multiple items of data content of interest, (2) accumulating said information regarding said plurality of actions until a predetermined threshold associated with said plurality of actions is reached, and (3) after reaching said threshold, communicating a request for said multiple items of data content of interest. Office Action at pp. 3-4. The Office alleges, however, that the "listening booth" features of Leeke provides the above-noted limitations and that it would have been obvious to

include those features in the system of Lee. *Id.* In offering alleged reasons for the combination, the Office Action states:

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Lee to receive and track information regarding a plurality of actions associated with multiple items. One would have been motivated to receive and track information regarding a plurality of actions associated with multiple items in order to gather and collect data. Office Action at p. 3.

* * *

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Lee to collect information regarding a plurality of actions until a threshold of actions is reached and communicating items of interest. One would have been motivated to collect information regarding a plurality of actions until a threshold of actions is reached and communicating items of interest in order to make sure the customer has complied with the minimum requirements before providing goods or services. Office Action at pp. 3-4.

The Office's rejection does not make out a *prima facie* case of obviousness for at least several reasons and should be withdrawn.

First, one of ordinary skill in the art would not have sought to modify Lee's system in view of Lee's disclosure because doing so would have rendered Lee's vehicle-based multimedia device (automotive radio) unsuitable for an intended purpose, namely safe, vehicle-based operation by a driver. See MPEP 2143.01(V) and 2145(X)(d). The Office's rejection on its face purports to make the "listening booth" features of Lee's vehicle-based multimedia device available to Lee's vehicle-based multimedia device. This is evident since the Office Action, after reciting a litany of Lee's listening-booth features, states: (1) "One would have been motivated to receive and track information regarding a plurality of actions associated with multiple items in order to gather and collect data;" and (2) "One would have been motivated to collect information regarding a plurality of actions until a threshold of actions is reached and communicating items of interest in order to make sure the customer has complied with the minimum requirements before providing goods or services." Office Action at pp. 3-4. The Office's rejection is facially deficient, however, because it purports to modify Lee's vehicle-based multimedia device to require an excessive level of attention, complex interaction and

focused control by the driver to such an extent that would render its operation by the driver manifestly unsafe. It is self-evident that Lee's vehicle-based multimedia device must be safely operable by a driver of the vehicle in which the multimedia device 20 resides.

However, Lee's listening-booth features for selecting, reviewing and rating audio samples involves viewing and navigation multiple GUI display windows and involves numerous interactive steps requiring focused attention by the end user, including those such as shown in FIGS. 24-28 and described at col. 22, line 1 – col. 23, line 41, for example:

- initiate the listening booth feature via control 226 on a first display of the GUI (FIG. 24),
- view directions via option 650 if desired (FIG. 24),
- register (or log in), e.g., such as with a password (FIG. 24),
- view various categories of music from which to select on a second display (FIG. 25),
- select an option 660 to view different categories if desired (FIG. 25),
- select a desired category (FIG. 25),
- view a third display of information about a music selection based upon the selected category (FIG. 26),
- listen to the music selection whose information is displayed on the third display (FIG. 26),
- rate the music selection using a control 674 displayed on the third display by manipulating a marker 676 with respect to a numerical scale 680 (FIG. 26),
- cancel a rating via button 252 if desired (FIG. 2),
- listen to and rate additional music samples,
- return to the first display and select control 690 to view previously reviewed items if desired (FIG. 24),
- view a fourth display containing a list of the previously reviewed items resulting from selection of control 690 (FIG. 27),
- select an icon 704 from among the previously reviewed items to view images and credits and/or hear an audio clip if desired (FIG. 27),

- based on the selected icon 704, view a fifth display containing the image and credits for the selected item, if desired, and initiate playback of the audio clip via control 722 (FIG. 28), and
- when the number of albums rated by the end user has reached a predetermined number, select via a dedicated button (not shown) an album from a list to request that a complementary copy be shipped to an address of the end user.

The level of focused attention and complex interaction required of the end user in operating Leeke's system is utterly incompatible with Lee's vehicle-based system. Indeed, in describing appropriate platforms for the Leeke's system, Leeke identifies "a general purpose computer, a network computer, a network television, an Internet television, and a wireless device." Col. 4, lines 21-24. These devices are plainly of a type for which a user can devote focused, uninterrupted attention. A vehicle-based radio system is clearly not of that type, and it is respectfully submitted that one of ordinary skill in the art would not have sought to apply Leeke's listening booth feature to Lee's vehicle-based system. The rejection should be withdrawn for at least this reason.

Second, one of ordinary skill in the art would not have sought to modify Lee's system in view of Leeke's disclosure because doing so would have rendered Lee's vehicle-based multimedia device unsuitable for another intended purpose, namely, purchasing an individual item advertised over the broadcast airwaves "with the touch of a button." As noted above, Lee explicitly discloses that an intended purpose of Lee's system is to allow the purchase of an advertised on air product "with the touch of a button." Col. 7, lines 62-65. Lee describes at col. 11, lines 16-28 aspects of this purchasing feature, including its simplicity (a buy request is initiated with a single button push) and its plain disclosure relating to the ability to immediately purchase a single item:

In one embodiment of the system 10 , when a user wishes to purchase *a product* or get more information about *a product* while in the vehicle 184, the user can press a "BUY" or "INFO" button on the multimedia device 20, which transmits to the gateway network 30 the location of his vehicle 184 (GPS derived), the date and time of the button press, and the channel selected. *The advertised item* is then looked up in the database 196 , and the user is charged for its delivery or is sent more information about the

product. In an alternative embodiment, enhanced advertising information for short periods of time may be pushed to the multimedia device 20 from the gateway 30 at set intervals. *Only those ads offering immediate purchase* or additional information will preferably show indicators for these actions. (Emphasis added.)

Lee's disclosure clearly intends that the vehicle driver using Lee's system will buy *one item at a time with a single button push* involving at most momentary action by the driver and very minimal distraction.

In contrast, the rejection facially requires vastly more of the Lee's driver than purchasing an item with the touch of a button. In proposing to modify Lee's vehicle-based system with Lee's listening booth features, the Office Action states, for example:

One would have been motivated to collect information regarding a plurality of actions until a threshold of actions is reached and communicating items of interest in order to make sure the customer has complied with the minimum requirements before providing goods or services. Office Action at pp. 3-4.

The multitude of interactions that would be required of Lee's driver under the Office's hypothetical modification have been explained above and would clearly defeat Lee's stated purpose of buying an item with the press of a button. The rejection should be withdrawn for at least this additional reason. If the Office has intended a different type of modification, clarification is respectfully requested.

Third, one of ordinary skill in the art would not have sought to modify Lee's system in view of Lee's disclosure because there would have been no expectation of success. See MPEP 2143.02. As noted above, in Lee's system, the player 142 resides on the server 102, not on the client apparatus 106. Col. 4, lines 50-67. The client apparatus 106, operable by a user, can access the server's player 142 via the electronic network 100 using a dedicated electronic address (e.g., URL). The server's player 142 communicates to the client 106 a GUI including a series of display screens or windows to the client 106, thereby providing the end user of the client apparatus 106 with a browser and with control of content-selection and playback. Col. 7, lines 38-44. As such, Lee's client apparatus 106 would plainly require substantial bandwidth and connectivity to the server 102 insofar as the player 142 resides on the server 102, not on the client apparatus 106. Lee contains no disclosure of providing

Leeke's level of *graphics-based functionality* in a mobile platform via a *server-based* application, and the Office has provided no evidence of such. There appears to be no evidence to suggest that the Office's hypothetical modification would provide a successfully working system with Leeke's *graphics-based and server-based* functionality for access in a highly mobile, vehicle-based radio device. The rejection should be withdrawn for at least this additional reason.

Fourth, the reasoning for the Office's hypothetical modification of Lee's system is vague and unduly broad. The Office Action states, in alleging that it would have been obvious to one of ordinary skill in the art to receive and track information regarding a plurality of actions associated with multiple items, that "One would have been motivated to receive and track information regarding a plurality of actions associated with multiple items in order to gather and collect data." Office Action at p. 3 (emphasis added). This purported reason is so broad and vague as to be essentially meaningless. It bears no particularity whatsoever to the subject matter recited in the claim nor the subject matter at hand in Lee. The rejection should be withdrawn for at least this additional reason.

Independent claims 16, 57, 68, 76 and 87 are distinguishable over Lee for reasons similar to those described above in connection with claim 1. Accordingly, withdrawal of the rejection and allowance of all independent claims is respectfully requested.

Dependent Claims

The remaining dependent claims are allowable at least by virtue of dependency from claims 1, 16, 57, 68, 76 and 87, and their allowance is respectfully requested. Moreover, there are additional reasons for the allowability of dependent claims.

For example, regarding claims 13, 25, 65, 74, 84 and 93, the Office's rejection is inconsistent with the rejection of the corresponding independent claims. As noted above, *the Office Action acknowledges that Lee fails to disclose any thresholding involving multiple items*. See Office Action at pp. 3-4. In fact, the Office Action purports to rely on Leeke – a different reference – for an alleged disclosure of such features. However, in rejecting claims 13, 25, 65, 74, 84 and 93, the Office Action cites not to Leeke, but back to Lee at col. 11, lines 16-34 for alleged disclosure of a predetermined threshold that is either a threshold indicating either a number of actions to be recorded before placing said electronic order, or a

threshold indicating either a download time limit or content size, before placing said electronic order. Office Action at p. 7. This is plainly inconsistent with the rejection of the independent claims. In addition, this section of Lee contains no such disclosure. Rather col. 11, lines 16-34 of Lee state in totality:

Advertising databases 196 provide information about advertisements (e.g., advertiser name, ad content, time of ad run, etc.) that are inserted into real-time radio broadcasts and into digital personalized broadcasts. In one embodiment of the system 10, when a user wishes to purchase a product or get more information about a product while in the vehicle 184, the user can press a "BUY" or "INFO" button on the multimedia device 20, which transmits to the gateway network 30 the location of his vehicle 184 (GPS derived), the date and time of the button press, and the channel selected. The advertised item is then looked up in the database 196, and the user is charged for its delivery or is sent more information about the product. In an alternative embodiment, enhanced advertising information for short periods of time may be pushed to the multimedia device 20 from the gateway 30 at set intervals. Only those ads offering immediate purchase or additional information will preferably show indicators for these actions.

There is simply no disclosure in Lee that pertains to a predetermined threshold as claimed. As such the rejection of these claims is not only factually flawed with regard to what Lee discloses but is also inconsistent with the rejection of the corresponding independent claims. The rejection of these claims should be withdrawn for at least these reasons.

In addition, regarding claims 14, 26, 66, 75, 85, and 94, the Office's rejection is inconsistent with the rejection of the corresponding independent claims and is factually flawed as to what Lee discloses. As noted above, the Office action acknowledges that Lee fails to disclose any thresholding involving multiple items, and the Office Action purports to rely on Lee for an alleged disclosure of such. However, in rejecting claims 14, 26, 66, 75, 85, and 94, the Office Action cites not to Lee, but back to Lee at col. 6, lines 21-32 of Lee, asserting, "Since the threshold field is one of the parameters, it is inherent that the threshold would be modifiable by the user is part of the user's profile." Office Action at p. 8. This is plainly inconsistent with the rejection of the independent claims. In addition, this section of Lee contains no such disclosure, and, in particular, there is no "threshold field" disclosed in Lee. On the contrary, col. 6, lines 21-32 states in totality:

Remote programmable devices 40 , such as a computer connected to the Internet 60 , are used to download information from the Internet gateway network 30 to the multimedia device 20 in the vehicle 184 . From a remote device 40 , a user can customize the way audio broadcasts and personal information service channels are organized in the vehicle's multimedia device 20 , can request new personal information services be downloaded from the Internet gateway 30 to the multimedia device 20 , and can retrieve information from the gateway 30 that he has stored there from the vehicle 184 . The user can also access his custom profile and billing information records.

There is simply no disclosure in Lee that pertains to a predetermined threshold as claimed. As such the rejection of these claims is not only factually flawed with regard to what Lee discloses but is also inconsistent with the rejection of the corresponding independent claims. The rejection of these claims should be withdrawn for at least these reasons.

Further, the rejections of claims 7, 23, 62, 71, 81, and 90, claims 8, 20, 63 and 82, claims 9, 64, and 83, and claim 10, are facially flawed since they rely on a flawed obviousness standard and/or provide no reason at all for the proposed modification, and cite evidence without foundation that is, in fact, contrary to the disclosure of Lee. In this regard, the Office Action states:

Lee teaches purchasing a product; however, Lee could have modified the invention to allow the user to place a variety or multiple orders of items. For example, the website Amazon.com allows a user to place multiple orders when shopping online.” Office Action at p. 5, regarding claims 7, 23, 62, 71, 81, and 90.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Lee to communicate a request for multiple items. For example, Amazon.com allows consumers to place multiple orders when shopping online. Office Action at p. 6, regarding claims 8, 20, 63 and 82.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Lee to process multiple items. For example, Amazon.com processes various items when consumers are shopping online. Office Action at p. 8, regarding claims 9, 64 and 83.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Lee [to] deliver multiple items of interest to the user. Lee is able to receive information about a product, however Lee

could have modified the invention to deliver multiple items of interest.
Office Action at p. 6, regarding claim 10.

Regarding claims 7, 23, 62, 71, 81, and 90, and claim 10, as the Office should be aware, “could have modified the invention” is simply not a valid premise upon which to base an obviousness rejection. The Office must state a reason for the proposed modification, and these rejections fail to do so. Further, the rejections of claims 8, 20, 63, 82, 9, 64 and 83 likewise provide no reason for the proposed modification and simply cite to what is allegedly done at Amazon.com without explanation. As such, all of these rejections are facially flawed and should be withdrawn.

Moreover, the reliance upon Amazon.com in the above-noted rejections is without foundation and is, in fact, contrary to Lee’s own disclosure. There is no evidence of record establishing the applicability of Amazon.com, an online vendor generally accessed by customers via desktop and laptop computers, to Lee’s vehicle-based multimedia device, in which the driver of vehicle, upon hearing a desired item, takes a momentary action to purchase it with the touch of a button. To the contrary, one of ordinary skill in the art would recognize that the driver of a vehicle driver using Lee’s vehicle-based multimedia device would not “navigate” via a web browser to the website of a vendor such as Amazon.com and “go shopping online” for multiple items. One of ordinary skill in the art would clearly recognize that the driver of Lee’s vehicle, first and foremost, needs to drive the vehicle safely – not engage in online shopping when he is supposed to be driving. Lee’s disclosure clearly intends that the vehicle driver using Lee’s system will buy one item at a time with a single button push involving at most momentary action by the driver and very minimal distraction (*see*, col. 11, lines 20-28 of Lee reproduced elsewhere herein and associated discussion). These rejections should be withdrawn for at least these additional reasons.

In addition, claims 9, 21, 64 and 83 recited subject matter that is further distinguishable over the Office’s hypothetical modification. In particular these claims require that the requested multiple items of data content of interest are processed for *digital radio broadcast* or received via *digital radio broadcast*. Neither Lee nor Leeke disclose this subject matter either singly or in combination. The Office Action, as explained above, relies upon Leeke for allegedly delivering multiple items of content of interest via the listening booth feature. However, Leeke explicitly discloses that the album requested via the listening

booth feature is “shipped” to the end user’s address, i.e., a physical building address. Leeke explicitly states: “Once the number of albums rated by the end user has attained a predetermined number, the end user can request a complimentary copy by selecting any one of the albums in the list. A dedicated button (not illustrated) can be selected to request that the complimentary copy be shipped to an address of the end user.” Col. 23, lines 35-41
Thus, Leeke does not disclose the claimed subject matter.

Lee does not make up for this deficiency of Leeke. Lee states, regarding purchase of a product, “The advertised item is then looked up in the database 196, and the user is charged for its delivery or is sent more information about the product.” Col. 11, lines 26-28. Lee also states, “In some implementations, requests from the vehicle 184 may come through the cellular network 186a while responses may be routed through FM sub-carriers 186b or faster satellite networks 186c. Wireless session servers 210 are preferably dedicated to maintaining connections with the rest of the gateway network 30 no matter what form of transmission is used.” Col. 10, lines 53-59. In neither of these sections does Lee disclose delivery via digital radio broadcast. Rather, any such delivery of a requested item, or information about an item, would readily be understood by one of ordinary skill in art to mean delivery to a building address or, at most, perhaps delivery via internet gateway 30. Indeed, even the routing via FM subcarrier or satellite as disclosed in the above-noted section of Lee starts with transmission at the internet gateway 30 and ends at the gateway communication unit of the multimedia device 20 as shown in FIG. 2 of Lee. In no circumstance does Lee disclose delivery of a requested item via the software programmable multiband receiver 210 shown in FIG 2, which receives digital audio broadcasts. Accordingly, claims 9, 21, 64 and 83 are allowable for at least these additional reasons.

For at least these reasons, withdrawal of the rejections of record and allowance of claims 1-26 and 57-95 are respectfully requested.

New Dependent Claim 96

New dependent claim 96 has been added herein and recites that the broadcast information communicated via digital radio broadcast contains information regarding the multiple items of data content of interest. This claim is allowable at least by virtue of dependency. Moreover, claim 96 is further allowable for additional reasons. First, one of

ordinary skill in the art would not have sought to modify the system of Lee based on the disclosure of Leeke to arrive at the claimed subject matter, because Leeke's listening booth feature upon which the Office relies does not pertain to *broadcast information whatsoever*. As noted at paragraph 0005 of the published application, broadcast information is information that is pushed or sent out regardless of whether anyone is tuned in. Leeke's listening booth instead pertains to information that pulled from a server over a network, such as the Internet, in connection with an explicit user request for information. One of ordinary skill in the art would not look to Leeke for insights into ways of purchasing an item stemming from digital radio broadcast information using a digital radio receiver since Leeke is directed to providing personalized content to computer users from a server computer over a network like the Internet. Moreover, even if Leeke and Lee were combined for the sake of argument, the resulting combination would not yield the combination of features required by claim 96 since Leeke's listening booth feature facially is not applicable to digital radio broadcast but requires client-server interaction via a network such as the Internet as explained previously herein. Accordingly, claim 96 is further patentable for at least these additional reasons.

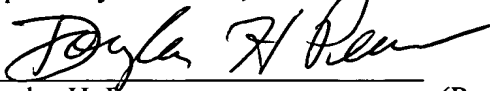
Conclusion

In light of the above amendments and remarks, reconsideration and allowance of this application are respectfully requested. The Examiner is urged to call the undersigned attorney if a telephone call could help resolve any remaining items.

The Commissioner is hereby authorized to charge any required fee(s) to Jones Day Deposit Account No. 50-3013.

Date: July 13, 2009

Respectfully submitted,



Douglas H. Pearson 47,851
JONES DAY (Reg. No.)
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939